IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 127 of 2005
WITH
Stay Application No. 11356 of 2005

1. Sardar Nihal Singh
   S/o Late Bagga Singh
2. Sardar Joginder Singh
   S/o Shri Nihal Singh
   R/o Umesh Lodge, Kaushik Bhawan
   Upper Road, Haridwar
   Pargarna Jwalapur
   Tehsil and Distt. Hardwar …….Revisionists

Versus

1. Jat Dharamshala Samiti Hardwar (Regd.)
   Pradhan Karyalya, Jat Dharamshala,
   Upper Road, Hardwar through its
   Prabhandhak.
2. Kashi Ram S/o Shri Sadha Ram
   Prabhandhak Jat Dharamshala Samiti
   Jat Dharamshala Samiti
   Jat Dharamshala, Upper Road
   Hardwar, Tehsil and Distt. Hardwar.

…….Respondents

Shri Jagdish Prasad, learned counsel for the revisionists.
Shri L.P. Naithani, Sr. Advocate, assisted by Shri Pankaj Miglani, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

Heard learned counsel for the parties.

2. This revision is directed against the order dated 11.11.2005, passed on objections 4-C 2, moved by the judgment debtor, before the executing court, whereby the objections of the judgment debtor, are dismissed.

3. Brief facts of the case are that a small cause suit was instituted by the plaintiff/decree holder,

which was registered as Small Cause Suit No. 69 of 1997. The same was decreed and the revision against said suit was also dismissed. It is admitted between the parties that the judgment debtor lost that round of litigation up to the Apex Court. Thereafter, Execution Case No. 05 of 2004, was filed for execution of the decree, in which objections 4-C 2, registered as Mis. Case No. 1 of 2005, were filed by the judgment debtor on the ground that the possession of the accommodation in question was handed over to the decree holder and fresh lease has started and the judgment debtor is in occupation of the accommodation under new tenancy. However, learned executing court, after hearing the parties found that the document, relied by the judgment debtor is not verified by the court nor admitted by the decree holder. The executing court, rejected the objections and directed to proceed with the execution. Against said order, this revision is preferred.

4. After going through the impugned order passed by the executing court, I am in full agreement with the said order, as the objections filed before the executing court appear to be an attempt to escape from the execution of decree, which stands confirmed right to the Apex Court. I am in agreement with the reasons mentioned by the executing court that in the facts and circumstances the ‘supurdaginama’, relied by the judgment debtor

cannot be believed to stop the execution proceedings, particularly when the landlord/decree holder is denying that he received the possession of the accommodation in question. The adjustment/compromise, relied by the judgment debtor could have been said to be lawful only if it would have been in consonance with Rule 2 or Order XXI of Code of Civil Procedure, 1908.

5. In the above circumstances and for the reasons as discussed above, there appears neither any jurisdictional error on the part of the executing court in rejecting the objections under Section 47 of the Code, nor is there any material illegality in the impugned order. As such, this Court cannot interfere with the impugned order. Accordingly, the revision is liable to be dismissed. The same is dismissed.

(Prafulla C. Pant, J.)

Dt: 29th March, 2006
Sweta